

MAKING CERTAIN REVISIONS IN TITLES I THROUGH IV
OF THE OFFICER PERSONNEL ACT OF 1947, AS AMEND-
ED, AND FOR OTHER PURPOSES

JUNE 7, 1951.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. RIVERS, from the Committee on Armed Services, submitted the
following

REPORT

[To accompany H. R. 4200]

The Committee on Armed Services, to whom was referred the bill (H. R. 4200) to make certain revisions in titles I through IV of the Officer Personnel Act of 1947, as amended, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

The principal purpose of H. R. 4200 is to give the President the authority in time of war and national emergency to suspend certain provisions of the Officer Personnel Act of 1947, relating to the Navy and Marine Corps. These amendments will give the Navy and Marine Corps flexibility in the administering of this act similar to that now authorized by the Army and Air Force.

At the time the Officer Personnel Act was passed, the long-range plan for the Navy envisioned a small Navy with practically all officers being Regular. However, recent events show clearly the Navy will for some time be considerably larger than originally contemplated. Therefore, it is considered desirable to amend the Officer Personnel Act in certain particulars.

The Officer Personnel Act relating to the Navy and Marine Corps requires the separation of officers of the lower grades (lieutenant, junior grade, and lieutenant) who are not selected for promotion. Most of these officers are "qualified for promotion" but do not meet the standard of "best fitted for promotion" which is required for selection by the Navy and Marine Corps promotion system. At the present time there are approximately 300 young officers in the Navy and 13 in the Marine Corps who will be separated from the Navy and Marine Corps on June 30 of this year. It seems inconsistent to

require the separation of these qualified young officers who, in most instances, are graduates of the Naval Academy when, at the same time, the Navy and Marine Corps are calling Reserve officers to active duty involuntarily. The bill will eliminate the requirements that these qualified, though not best fitted, young officers be separated, and will authorize their temporary promotion to the next higher grade. In order to insure, however, that the Navy and Marine Corps will not be required to promote, or retain on active duty, officers whose performance of duty has been unsatisfactory, the bill contains provisions for the separation of such officers.

The bill also would permit flexibility in the making of computations upon which to base the distribution of officers in the various grades. At the present time the law requires that a single computation be made as of January 1 of each year. In view of the constantly changing situation, the Navy and Marine Corps Departments are requesting authority to make these computations as the needs of the services require.

Another section of the bill requires that temporary promotions be made only on recommendations of selection boards following the same procedures as now apply to permanent promotions under peacetime law.

The bill will allow the President to suspend certain features of the Officer Personnel Act. This is considered necessary, inasmuch as the act is geared to peacetime, and a much smaller Navy.

The present law requires the board for the recommendation of rear admirals for continuation on the active list to consist of five rear admirals, or officers of higher grade, senior to any officer under consideration. This is interpreted to mean that the membership of the board considering admirals and vice admirals must be senior in temporary and permanent grades to any admiral under consideration. The bill will provide that admirals serving on selection boards for recommendation of rear admirals for continuation on the active list be consisted of admirals senior only in permanent rank.

The bill will also allow the Marine Corps selection boards to be composed of Marine officers of the retired list, as well as the active list, so as to lessen the necessity of substituting rear admirals of the Navy for this purpose.

SECTIONAL ANALYSIS OF THE BILL

Section 1

Amendments to the Officer Personnel Act of 1947, as amended:

Subsection (a).—The last sentence of sections 116 and 214 states that titles I and II of the Officer Personnel Act would become effective upon the termination of title III.

This amendment would provide that, except when suspended in time of war or national emergency, the provisions of titles I and II would only be effective during any period in which title III of the act is not in effect. The amendments to these sections would bring them in consonance with the proposed amendment to section 301 of title III (subsec. (b)).

Subsection (b).—Under the present provisions of section 301, the temporary features of the Officer Personnel Act would be terminated when the number of officers holding permanent appointments on the

active list of the line of the Regular Navy is equal to 95 percent of the number of such officers authorized by law or on January 1, 1957, whichever occurs earlier. At present there is no authority for the suspension of any of the provisions of title III.

This amendment to section 301 would provide that title III be effective during any period when temporary and Reserve officers, in addition to Regular officers, are serving on active duty. It would also provide that the President may, during any period that he determines the needs of the service so require, suspend the operations of any or all of the provisions of title III relating to officers serving in the grades of lieutenant and lieutenant (junior grade).

Subsections (c) and (d).—Subsections (g) and (h) of section 303 permit the Secretary of the Navy to make but one computation each year as of January 1 to determine the authorized number of officers in the various grades. Whenever there is any large influx of Reserve officers to active duty, it is probable that certain grades will be exceeded in numbers prior to the next annual computation on January 1.

This amendment would permit Reserve officers recalled to active duty to be carried as excess numbers in grade until the next computation and would also permit the Secretary to make computations at such times as the needs of the service require, thus making it possible to provide for fluctuations in officer strength.

Subsection (e).—Subsection 304 (n) provides that, except in the event of a future war or national emergency, no additional temporary appointments in the naval service shall be effected pursuant to the authority of the act of July 24, 1941, as amended, after August 7, 1947, the effective date of the Officer Personnel Act of 1947.

This amendment would authorize the President to suspend subsection 304 (n) when the needs of the service require. It is contemplated this action would be taken at the same time as that provided by subsection (b) above. Although the proclamation of an emergency in December 1950 now permits officers to be promoted under the wartime act of July 24, 1941, it is considered that events, similar to Korea, when an emergency is not immediately declared, might in the future necessitate the use of the temporary promotion system.

Subsection (f).—Present law requires the Board for the recommendation of rear admirals for continuation on the active list to consist of five rear admirals, or officers of higher grade, senior to any officer under consideration. This is interpreted to mean that the membership of the Board considering admirals and vice admirals must be senior in temporary and permanent grade to any admiral under consideration.

This amendment would amend subsection (a) of section 305 to provide that admirals serving on selection boards for recommendation of rear admirals for continuation on the active list shall consist of admirals senior only in permanent rank.

Subsection (g).—Present law provides that, whenever there are insufficient Marine Corps general officers to serve on selection boards for promotion to colonel and above, rear admirals must be substituted.

This amendment would amend subsection (f) of section 314 to permit Marine Corps selection boards to be composed of Marine officers of the retired list as well as the active list so as to lessen the necessity of substituting rear admirals of the Navy for this purpose.

Subsection (h).—There is no provision to suspend any part or all of the Officer Personnel Act during war or national emergency. The rigid peacetime promotion by selection requires the separation of Regular officers with less than 20 years' service who fail to meet the "best fitted" qualification. The majority of these officers are fully qualified to remain on active duty but the limited number of billets for Regular officers will not permit them to stay for a full career. Those who are not "best fitted" are released with severance pay under normal peacetime conditions, but in an expanding Navy they can be temporarily retained on active duty until the officer structure is stabilized. Their separation in these critical times would necessitate their replacement by a like number of Reserve officers of the same rank and experience, some of them recalled involuntarily.

This amendment would add a new subsection to section 426 which would permit the President at any time that he may deem advisable during any period of war or national emergency to suspend any or all of the provisions of this act which relate to the distribution in grades, promotion by selection, involuntary retirement, and discharge of officers of the naval service. This is a companion amendment to that in subsection (a) of the bill.

Section 2

Section 2 amends section 5 of the act of July 24, 1941, as amended:

Subsection (a).—That act did not provide for promotion by selection by a board of officers convened for that purpose.

This amendment would provide that officers, temporarily promoted pursuant to the Temporary Promotion Act of July 24, 1941, shall be so promoted only upon the recommendation of a board of officers convened for that purpose. It would stabilize promotions and provide equality of opportunity for promotion of all officers on active duty.

Subsection (b).—The wartime temporary promotion law provides no method of separating unsatisfactory officers. This amendment would parallel that existing under the Officer Personnel Act which would be suspended by other amendments of this amendatory act. It is considered necessary to have a means of separating unsatisfactory officers.

The Bureau of the Budget interposes no objection to the bill and the Department of Defense recommends enactment as is evidenced by the following letter from the Judge Advocate General of the Navy acting on behalf of the Department of Defense:

DEPARTMENT OF THE NAVY,
OFFICE OF THE JUDGE ADVOCATE GENERAL,
Washington 25, D. C., June 4, 1951.

HON. CARL VINSON,
Chairman, Committee on Armed Services,
House of Representatives, Washington 25, D. C.

MY DEAR MR. CHAIRMAN: Reference is made to your request for the views of the Department of Defense with respect to H. R. 4200, a bill to make certain revisions in titles I through IV of the Officer Personnel Act of 1947, as amended, and for other purposes. The Secretary of Defense has delegated to the Department of the Navy the responsibility for expressing the views of the Department of Defense on this bill.

The subject bill is essentially a consolidation of two legislative proposals which were submitted to your committee by the Department of Defense on January 19 and February 28, 1951, after having been coordinated within the Department of Defense and approved by the Bureau of the Budget.

The purpose of the proposed legislation is to make certain revisions in the provisions of the Officer Personnel Act of 1947 which relate to officers of Navy and Marine Corps so as to meet the requirements of the service during the period of a national emergency.

The bill would give the President authority in time of war or national emergency to suspend the provisions of the Officer Personnel Act which relate to distribution in grade, promotion by selection, and involuntary retirement and discharge of officers, which would give the Navy and Marine Corps flexibility in the administration of the act similar to that now authorized under title V for the Army and Air Corps. The present provisions of the Officer Personnel Act require the discharge of lieutenants and lieutenants (junior grade) who twice fail of selection for promotion and restrict the employment of Reserve officers in the ranks needed because of grade limitations. It is essential that the President be authorized during a national emergency or war to suspend these and such other provisions of the act as the needs of the service require.

Title III of the Officer Personnel Act authorizes the appointment of temporary officers and the employment of temporary and Reserve officers only on a temporary basis. It now appears, however, that temporary and Reserve officers will be employed on active duty for some years to come. The bill would eliminate the terminable features of title III.

Under the present provisions of title III of the Officer Personnel Act, the Secretary of the Navy may make computations to establish the allowances of officers in the various grades but once annually. This restriction makes it impossible to adjust grade allowances during periods of immediate expansion such as resulted from the Korean incident. Present world conditions will undoubtedly affect the size of the Navy in the foreseeable future and greater flexibility is required to handle efficiently officer programs during such periods of fluctuation. Authority to establish grade allowances at times when needed is therefore essential.

Present law requires that boards for the recommendation of rear admirals for continuation on the active list consist of five rear admirals, or officers of higher grade, senior to any officer under consideration. Under this provision the members of the board considering admirals and vice admirals must be senior in temporary and permanent grade to any admiral under consideration. The bill would amend section 305 (a) of the Officer Personnel Act so as to provide that members of such boards be senior only in permanent rank to any officer under consideration, thus permitting the use of senior rear admirals who have previously been selected for retention on the active list.

Section 314 (f) of the Officer Personnel Act provides that whenever there are insufficient Marine Corps general officers to serve on selection boards for promotion to the grades of colonel and above, rear admirals of the Navy must be substituted. The bill would amend this section so as to permit Marine Corps selection boards to be composed of Marine Corps officers of the retired list as well as of the active list, thus reducing the necessity of using rear admirals of the Navy as members of these boards.

The authority contained in the act of July 24, 1941, to effect temporary promotions may be exercised during a national emergency or war. The Navy Department intends to implement that authority, under Presidential regulations, with respect to temporary promotion of officers to grades of lieutenant commander and major and below. In order to insure fair treatment of officers and to avoid discrimination or inequitable treatment, it is essential that the law authorize temporary appointments or promotions only upon the recommendation of selection boards. The bill would amend the act of July 24, 1941, so as to provide that officers shall be temporarily appointed to grades above lieutenant (junior grade) in the Navy and first lieutenant in the Marine Corps only upon the recommendation of a board of officers convened for that purpose.

The act of July 24, 1941, which would be in effect during the suspension of the provisions of the Officer Personnel Act which relate to the Navy and Marine Corps, makes no provision for the separation of unsatisfactory officers from the service. The bill would amend that act so as to provide that officers of less than 20 years of service whose records indicate unsatisfactory performance of duty may be separated from the service in the same manner now provided by the Officer Personnel Act.

The Department of the Navy, on behalf of the Department of Defense, recommends the enactment of H. R. 4200.

Sincerely yours,

G. L. RUSSELL,
Rear Admiral, United States Navy,
Judge Advocate General of the Navy
(For the Secretary of the Navy).

CHANGES IN EXISTING LAW

In compliance with clause 2a of rule XIII of the rules of the House of Representatives, there is printed in parallel columns the text of provisions of existing laws which would be amended by the various provisions of the bill:

EXISTING LAW

THE BILL

OFFICER PERSONNEL ACT OF 1947, AS
AMENDED

SEC. 116

Sections 101, 102, and, as to distribution, sections 103 and 114 of this title shall be effective upon the date of approval of this Act. The remaining provisions of this title shall be effective upon the termination of title III of this Act.

SEC. 214

Sections 201, 202, and 203 of this title shall be effective upon the date of approval of this Act. The remaining provisions of this title shall be effective upon the termination of title III of this Act.

SEC. 301

The authority granted by this title and all provisions hereof shall be terminated when the President shall determine that the number of officers holding permanent appointments on the active list of the line of the Regular Navy is equal to 95 per centum of the number of such officers authorized by law or on January 1, 1957, whichever shall occur the earlier.

SEC. 303 (g)

(g) * * * That, notwithstanding the provisions of this subsection relating to the authorized number of officers in grade, in order to make adjustments for the number of officers originally appointed each year in any grade pursuant to this Act or to other provisions of law, the authorized number of officers in each grade concerned may be temporarily exceeded by such number of original appointments in such grade until the next succeeding annual computation authorized by this subsection shall be made.

Section I. * * * That the Officer Personnel Act of 1947, as amended, is further amended by—

(a) Deleting in sections 116 and 214 the last sentence thereof and substituting therefor the following sentence:

"Except when suspended under the provisions of section 426 (c), the remaining provisions of this title shall be effective during any period in which title III of this Act is not in effect."

(b) Amending section 301 to read as follows:

"SEC. 301. The authority granted by this title and all provisions thereof shall be effective during any period when the total number of line officers serving on active duty exceeds the number of line officers holding permanent appointments in the grade of ensign and above on the active list of the Regular Navy: *Provided*, That, with respect to provisions relating to officers serving in grades of lieutenant (junior grade) and lieutenant, the President, during any period that he determines the needs of the service so require, may suspend the operation of any or all such provisions of this title."

(c) Deleting in the last sentence of subsection (g) of section 303 the word "annual" and changing the period at the end of the said sentence to a colon and adding the following new proviso:

"*Provided further*, That, notwithstanding the provisions of this subsection relating to the authorized number of officers in grade, in order to make adjustments for the number of officers in the Naval Reserve who may be ordered to active duty in any grade pursuant to

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SEC. 303 (g)

(g) To determine the authorized number of line officers in each of the various grades above lieutenant (junior grade), and in the combined grades of lieutenant (junior grade) and ensign, as provided in this section, computations shall be made by the Secretary of the Navy as of the date of approval of this Act and thereafter as of January 1 of each year, and the resulting number in each of such various grades, and in the combined grades of lieutenant (junior grade) and ensign, as so computed, shall, subject to the provisions of subsection (k) of this section, be held and considered for all purposes as the authorized number of officers in each of such various grades and in the combined grades of lieutenant (junior grade) and ensign, and shall not be varied between such computations: *Provided*, That to determine the authorized number of line officers designated for limited duty in each of the various grades above lieutenant (junior grade), and in the combined grades of lieutenant (junior grade) and ensign, the Secretary of the Navy, as of the date of approval of this Act and thereafter as of January 1 of each year, shall compute the maximum number of such officers which may serve in each of such various grades, and in the combined grades of lieutenant (junior grade) and ensign, as provided in subsection (a) of this section, and shall determine the number of such officers in each of such various grades, and in the combined grades of lieutenant (junior grade) and ensign, not to exceed such maximum number, required to meet the needs of the service during the ensuing year, and the resulting number in each of such various grades, and in the combined grades of lieutenant (junior grade) and ensign, as so determined, shall be held and considered for all purposes as the authorized number of such officers in each of such various grades, and in the combined grades of lieutenant (junior grade) and ensign, and shall not be varied between such determinations: * * *

SEC. 303 (h)

(h) To determine the authorized number of officers in the grade of rear admiral in the Medical Corps, Supply Corps, Chaplain Corps, Civil Engineer Corps, and Dental Corps, respectively,

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this Act or to other provisions of law, the authorized number of officers in each grade concerned may be temporarily exceeded by such number of officers ordered to active duty in such grade until the next succeeding computation authorized by this subsection shall be made."

(d) Amending subsections (g) and (h) of section 303 by deleting where appearing the words "as of January 1 of each year" and substituting in lieu thereof the words "at such times that the needs of the service require but not less than once annually".

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and the authorized number of captains in the Medical Service Corps and the authorized number of commanders and lieutenant commanders in the Nurse Corps, as provided in this section, computations shall be made by the Secretary of the Navy as of the date of approval of this Act and as of January 1 of each year thereafter; the resulting number in the grade of rear admiral in each corps in which such grade is authorized, as so computed, shall, subject to the provisions of subsection (k) of this section, be held and considered for all purposes as the authorized number of officers in the grade of rear admiral in each such corps and shall not be varied between computations; the resulting number in the grade of captain in the Medical Service Corps and in each of the grades of commander and lieutenant commander in the Nurse Corps, as so computed, shall, subject to the provisions of subsection (k) of this section, be held and considered as the authorized number of officers in the grade of the corps concerned until a subsequent computation shall be made.

SEC. 304 (n)

(n) No additional temporary appointments in the naval service shall be effected pursuant to the authority of the Act of July 24, 1941 (55 Stat. 603), as amended, after the effective date of this Act, but nothing herein contained shall be held to impair the authority to make temporary appointments under that Act during any future war on national emergency.

SEC. 305 (a) (1)

(1) A board for the recommendation of rear admirals for continuation on the active list shall consist of five rear admirals, or officers of higher grade, senior to any officer under consideration. * * *

SEC. 314 (f)

(f) Selection boards shall consist of nine officers of the active list of the Marine Corps, the composition of the boards to be determined by the Secretary of the Navy: * * *: *Provided further*, That selection boards to recommend brigadier generals for temporary promotion to major general shall be composed of officers of the permanent grade of major general on the active list of the Marine Corps to the extent that such officers are deemed available for this duty by the Secretary of the Navy,

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(e) Changing the period at the end of subsection (n) of section 304 to a colon and adding the following proviso:

“Provided, That the President, during any period that he determines the needs of the service so require, may suspend the operation of this subsection.”

(f) Inserting in the first sentence of paragraph (1) of subsection (a) of section 305 after the word “senior” the words “in permanent rank”.

(g) Inserting in the first sentence of subsection (f) of section 314, between the words “active” and “list” the words “or retired” and deleting in the third proviso of that subsection the words “major general on the active list” and substituting therefor the words “major general or above on the active or retired list”.

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and the remainder of the board shall be composed of rear admirals on the active list of the line of the Navy, not restricted in the performance of duty: * * *.

SEC. 426 (a)

(a) The provisions of the Act of June 30, 1942 (56 Stat. 463), as amended, which relate to personnel of the Navy and Marine Corps, with the exception of sections 3 and 4 of the said Act, are hereby repealed, but this repeal shall in no way affect any provision of the said Act insofar as it relates to the personnel of the Coast Guard.

SEC. 426 (b)

(b) Nothing in titles I through IV of this Act shall be held to affect any provision of law which relates to personnel of the Coast Guard, Coast and Geodetic Survey, or Public Health Service.

(h) Amending section 426 by adding a new subsection as follows:

"(c) The President may, at such time or times as he may deem advisable during any war or national emergency declared after the effective date of this Act, suspend the operation of any or all of the provisions of this Act which relate to the distribution in grades, promotion by selection, involuntary retirement and discharge of officers of the naval service, and such suspension shall not continue beyond June 30 of the fiscal year following that in which such war or national emergency shall end."

ACT OF JULY 24, 1941 (55 STAT. 603), AS AMENDED (34 U. S. C. 350D)

SECTION 2. (a) The Act of July 24, 1941 (55 Stat. 603), as amended, is further amended by changing the period at the end of section 5 to a colon and adding the following proviso:

SEC. 5

The temporary appointments under the authority of this Act shall be in such numbers as the President may determine that the needs of the service require and in such manner and under such regulations as he may prescribe.

"Provided, That officers shall be temporarily appointed pursuant to this Act to grades above lieutenant (junior grade) in the Navy and first lieutenant in the Marine Corps only upon the recommendation of a board of officers convened for that purpose."

(b) Section 5 of such Act is further amended by—

(1) Inserting, immediately after "Sec. 5", the subsection designation "(a)"; and

(2) Inserting at the end thereof the following new subsection:

"(b) In addition to recommending those officers whom it considers fully qualified for temporary appointment to higher grades, such a board shall also

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report, from among the officers whose names are presented to it for consideration, the names of any officers of the active list of less than twenty years' service whose records in its opinion indicate their unsatisfactory performance of duty in their present grades and in its opinion indicate that they would not satisfactorily perform the duties of a higher grade. Officers holding permanent appointments on the active list of the Regular Navy or Marine Corps in the grades of warrant officer and above whose names are so reported shall, except as hereinafter provided, be honorably discharged from the naval service on the first day of the fourth month following that in which their names are thus reported with a lump-sum payment computed on the basis of two months' active-duty pay at time of discharge for each year of commissioned service computed in accordance with subsection 102 (d) of the Officer Personnel Act of 1947, as amended, for line officers and subsection 202 (d) of that Act for staff officers, but not to exceed a total of one year's active-duty pay. No such officer who is under consideration for or undergoing disciplinary action of any kind shall be separated from the naval service prior to the final disposition of his case and he shall thereafter without delay be separated from the naval service pursuant to this subsection or other provisions of law, in the discretion of the Secretary of the Navy. An officer holding permanent appointment as a commissioned warrant or warrant officer and serving temporarily in a higher grade, or an officer designated for limited duty who when appointed for the performance of limited duty only held a permanent appointment as a commissioned warrant or warrant officer, whose name is so reported shall, in lieu of such honorable discharge from the naval service, have the option of reverting to the grade and status he would have held had he not been so appointed. An officer designated for limited duty who when appointed for the performance of limited duty only held a permanent rating below warrant officer, whose name is so reported shall, in lieu of such honorable discharge from the naval service, have the option of reverting to the grade and status he would have held had he not been so appointed and instead had been appointed a warrant officer. In any computation to determine the grade and status to which such officers may revert, all of their active service as an officer designated for limited duty or as a temporary or reserve officer shall be included."